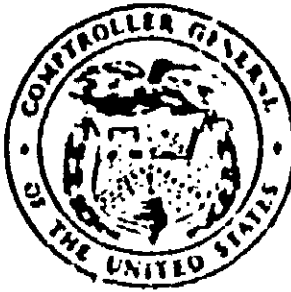


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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-204125

DATE: December 8, 1981

MATTER OF: Western Equipment of Oregon

DIGEST:

1. Although claims for equitable relief from an alleged mistake in bid filed after award have not been subject to timeliness requirements of GAO Bid Protest Procedures, protest seeking bid correction and award properly is subject to timeliness rules as effectiveness of remedy is dependent on prompt resolution of the matter.
2. Protests initially filed with contracting agency must be subsequently filed with GAO within ten working days of protester's receipt of agency's denial or they will be dismissed as untimely and protester's attempt to continue protest with agency does not toll the period for filing with GAO.
3. Discrepancy between unit price and extended price, where bid would be low only if extended price governed, is not correctable as clerical error since it cannot be ascertained from bid which price was actually intended.
4. Agency properly refused to consider bidder's work papers and to allow correction of bid where there was discrepancy between unit and extended price, bid would be low only if extended price governed, and intended bid was not apparent from bid, since applicable regulation does not allow correction of mistake in bid when another

bidder would be displaced as low bidder by the correction, unless intended bid can be determined from bid itself.

Western Equipment of Oregon protests the award of a contract for a 35-ton crane to McDonald Industries by the U.S. Army Corps of Engineers, under IFB No. DACW57-81-B-0031. Western contends the Army improperly refused to permit correction of a typographical error which would have made Western's bid lower than that of McDonald Industries. We believe that the protest is untimely under our Bid Protest Procedures, 4 C.F.R. Part 21 (1981); it is therefore dismissed.

The solicitation required the bidder to provide unit and extended prices for each of the four line items as well as a total price and it stated that in case of a discrepancy between the unit price and the extended price the unit price would govern subject, however, to correction to the same extent and in the same manner as any other mistake. Western bid a unit price of \$290,935 and an extended price of \$260,935 for the major line item, no charge for the other line items, and a total price of \$260,935. McDonald Industries bid \$277,148. In light of the discrepancy in Western's bid, a contract specialist called Western for verification and was told that the \$260,935 price was the intended bid. The contract specialist prepared an abstract of bids listing Western's price as \$260,935 and Western received a copy.

The agency then determined that the unit price should prevail. Western was informed of this change and during the next several weeks was informed that no award decision had been made but its bid was being evaluated as \$290,935. McDonald was subsequently awarded the contract. Western then protested to the agency, contending the \$290,935 price was the result of a typographical error provable by reference to its work sheets and asking that it be permitted to correct this mistake.

The Army's initial reaction to Western's bid was based on the assumption that an apparent clerical mistake had been made and that it was correctable under Defense Acquisition Regulation (DAR) § 2-406.2. The regulation provides for the correction of an apparent clerical mistake in a bid prior to award if that mistake is obvious on the face of the bid.

After Western verified that its unit price was erroneous and its extended price was its intended price, the Army reversed itself and concluded that the error was not a clerical one which was correctable under DAR § 2-406.2, but rather one that could be corrected only if the conditions of DAR § 2-406.3 (a)(3) were met. That section permits correction of other mistakes in appropriate circumstances.

By letter of June 18, which was received by Western on June 22, the Army refused to allow correction of Western's bid. Western attempted to pursue the matter further with the Army and it was not until July 23 that our Office received a telegram from Western protesting the rejection of its bid.

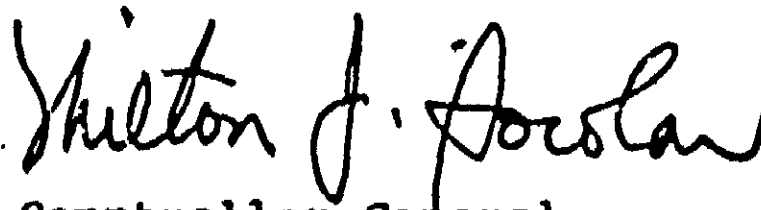
Our Bid Protest Procedures establish timeliness standards for the filing of protests. See 4 C.F.R. § 21.2. The timeliness rules are intended to provide for expeditious consideration of objections to procurement actions without unduly delaying the procurement process and to permit effective corrective action when appropriate. Davey Compressor Company, B-195425, November 14, 1979, 79-2 CPD 351. We have not applied these timeliness standards to post-award claims for equitable relief from an alleged mistake in bid, see Guy F. Atkinson Co., et al., 55 Comp. Gen. 546, 554 (1975), 75-2 CPD 378; Gallon Manufacturing Division, Dresser Industries, Inc., B-193335, June 19, 1979, 79-1 CPD 436; B-176760, January 22, 1973, because the procurement process would not have been interrupted or delayed and the interests of the competitors would not have been prejudiced by any delay in the resolution of the claims. However, where bid correction is sought in order to obtain an award the availability of that remedy, if it is warranted, depends largely upon prompt resolution of the matter. In such instances, delay can render competitors' prices increasingly obsolete as well as prevent the agency from obtaining delivery of needed items on schedule. Therefore, we believe the interests of all parties would be best served if complaints of an agency's failure to permit bid correction before award are treated as protests, rather than as claims, and are made subject to the timeliness rules contained in our Procedures.

Our Procedures provide that protests initially filed with the contracting agency will be considered subsequently by our Office only if they are filed within ten working days of the protester's learning of initial adverse agency action. Adams Bros. Interiors, B-201048, November 15, 1980, 80-2 CPD 360. In the case at hand, the agency's written denial of Western's protest was clearly adverse agency action and should have been protested to our Office within ten working days of June 22 when Western received the letter. The fact that Western continued to pursue its protest with the agency after the agency's denial did not toll the period for filing with our Office as prescribed in our Bid Protest Procedures. Kings Electronics Co., Inc., B-198799, May 22, 1980, 80-1 CPD 354. Therefore, as its protest telegram was not received until July 23, Western's protest is untimely and will not be considered on its merits.

We point out, for the protester's information, however, that the Army's position appears to be correct. To be correctable as a clerical error under the provisions of DAR § 2-406.2, a mistake must be obvious on the face of the bid and the contracting officer must be able to ascertain the intended bid from the face of the bid. Armstrong & Armstrong Inc. v. United States, 356 F. Supp. 514 (E.D. Wash. 1973), affirmed, 514 F. 2d 402 (9th Cir. 1975); G.S. Hulsey Crushing, Inc., B-197785, March 25, 1980, 80-1 CPD 222. In this case, neither the \$290,935 unit price nor the \$260,935 extended and total price is illogical or grossly out of line with the \$277,148 bid of the awardee and the intended bid cannot otherwise be determined from the bid alone. Thus, Western's mistake is not correctable as a clerical error under DAR § 2-406.2.

DAR § 2-406.3(a)(3) permits correction of a mistake when its existence and the bid actually intended can be established by clear and convincing evidence. When correction would result in the displacement of a lower bid, however, the regulation requires that the bid actually intended be "ascertainable substantially from the invitation and the bid itself." This requirement applies to situations, such as this one, where there is a discrepancy between unit and extended prices and the bid would be low only if either the unit or extended price was correct. 51 Comp. Gen. 283 (1971). The reason for the rule is that it would be unfair to other bidders to allow the bidder the opportunity to decide, after bid opening, which price to support and thus

whether to remain in contention for award. As indicated, it cannot be ascertained from Western's bid whether the unit price or the extended/total price was actually intended, since either could have been reasonably intended.

for 
Comptroller General
of the United States